



UNITED STATES MARINE CORPS

MARINE CORPS BASE
PSC BOX 20004
CAMP LEJEUNE, NORTH CAROLINA 28542-0004

BO 1640.10D
CINSP

7 DEC 1999

BASE ORDER 1640.10D

From: Commanding General
To: Distribution List

Subj: REVIEW OF PRETRIAL CONFINEMENT BY INITIAL REVIEW OFFICER

Ref: (a) JAGINST 5800.7C CH3 0127 (JAGMAN)
(b) MCM 1998 R.C.M. 305
(c) SECNAVINST 1640.9B

Encl: (1) Notice To Accused Upon Pretrial Confinement
(2) Pretrial Confinement Data Sheet
(3) 72-Hour Memorandum for Continued Pretrial Confinement
(4) Pretrial Confinement Hearing Record

1. Purpose. To set forth policy and procedures for the review of pretrial confinement and conduct of pretrial confinement hearings in accordance with the references.

2. Cancellation. BO 1640.10C.

3. Background. Reference (a) directs the Commanding General, Marine Corps Base, as the cognizant authority over the Base Brig, to designate one or more officers, of the grade of major or higher, to act as the Initial Review Officer (IRO) for purposes of reviewing the necessity for continued pretrial confinement of an accused confined in this Base's facility. Reference (a) requires the officer appointed to perform the initial review to be a neutral and detached officer.

4. Information

a. An IRO, resident at Marine Corps Air Station, Cherry Point, will be appointed by the Commanding General, Marine Corps Base, Camp Lejeune. The IRO will conduct all pretrial confinement hearings for personnel ordered into confinement from units located aboard Marine Corps Air Station, Cherry Point.

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b. Primary and alternate IROs, as designated from time to time by Commanding General, Marine Corps Base, Camp Lejeune, may be authorized to conduct pretrial hearings on personnel from other branches of service upon approval of the request. Officer appointments will be made in accordance with regulations prescribed by the Secretary concerned.

c. The IRO's office is located at Building 4000. All correspondence destined for the IRO will be delivered to the IRO at Building 4000, where it will be signed for and stamped with the date and time of receipt.

5. Policy

a. It is the policy of this Command, consistent with reference (b), that less serious forms of restraint must always be considered before pretrial confinement may be imposed. Pretrial confinement will not be imposed unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

(1) An offense triable by court-martial has been committed;

(2) The detainee committed it; and

(3) Confinement is necessary because it is foreseeable that:

(a) The detainee will not appear at trial, pretrial hearing, or investigation, or

(b) The detainee will engage in serious criminal misconduct; and

(c) Less severe forms of restraint are inadequate.

(Note: Serious criminal misconduct includes intimidation of witnesses or other obstruction of justice, seriously injuring others, or other offenses which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States.)

b. If pretrial confinement is initially valid but later determined to be unnecessary due to a change in circumstances, the detainee will be immediately released.

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6. Action

a. An IRO and one or more alternate IROs will be appointed, in writing, by the Commanding General, Marine Corps Base, Camp Lejeune, to fulfill the requirements of reference (a). Nominations from Marine Corps Air Station, Cherry Point, will be submitted in writing in sufficient time to ensure appointment of an IRO resident thereat.

b. Upon confinement, an accused will be promptly notified of his rights under reference (b) by the use of enclosure (1), which will be acknowledged by the accused and provided to the IRO.

c. Within 48 hours (not to be interpreted as two (2) working days) of the imposition of pretrial confinement under military control, a neutral and detached official, (who may be the confinee's commanding officer), must review the adequacy of the probable cause to believe the confinee has committed an offense and of the necessity for pretrial confinement. This preliminary probable cause review is met if:

(1) The commanding officer, complying with R.C.M. 305(d), personally orders the accused into confinement;

(2) The commanding officer, who did not personally order the accused into confinement, signs the 72 hour letter report, as required by R.C.M. 305(h), within 48 hours of the imposition of confinement; or

(3) The IRO conducts the 7-day review of pretrial confinement, as required by R.C.M. 305(i), within 48 hours of the imposition of confinement.

d. If it is determined that continued pretrial confinement is required, the commanding officer or (during the absence of the commanding officer) executive officer, officer in charge of units which parent organizations are deployed outside Camp Lejeune/New River, or the officer directing confinement in the case of service members not attached to local units or organizations, will complete a Pretrial Confinement Data Sheet utilizing the format depicted in enclosure (2) (original and two copies). The commander should clearly describe the rationale which led to the decision requiring continued physical restraint and state the reasons for his/her conclusions that the requirements for confinement,

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in accordance with reference (b), have been met. Enclosure (2) will be subscribed personally by the officer authorized to confine. It is the responsibility of the officer ordering confinement to ensure that this data sheet is delivered to the office of the IRO promptly, but not later than 72 hours after confinement or receipt of report of confinement except as follows:

(1) If the 72-hour period ends on a holiday, the period within which the Pretrial Confinement Data Sheet must be submitted is extended to 1200 local time on the day following the holiday.

(2) If the 72-hour period commences on a Friday which is a holiday, the Pretrial Confinement Data Sheet must be submitted by 1600 local time on the following Monday.

(3) If the 72-hour period ends on a non-working day, e.g., Saturday or Sunday, Commanding Officers are encouraged to deliver the Pretrial Confinement Data Sheet to the IRO prior to 1600 on the day preceding the non-working day, but in no event later than 1200 on the next working day.

e. If the Pretrial Confinement Data Sheet is delivered by the Commander at the time he initially orders pretrial confinement, a second data sheet need not be prepared, although additional information may be added at any time.

f. Failure to receive the data sheet within the prescribed 72-hour period may cause the IRO to forward enclosure (3) or to direct, in writing, release from confinement in accordance with reference (b).


g. Promptly, upon receipt of the data sheet, the IRO shall hold an informal hearing to determine the necessity for continued pretrial confinement. Reference (b) provides that the IRO shall make his determination within seven days of imposition of confinement, and for good cause, this time limit may be extended to ten days. However, this Command's policy is that review by the IRO will be made as soon as practicable after receipt of the data sheet. All possible notice will be given to the defense counsel, if one is assigned or requested. Results of the hearing will be reported by the IRO utilizing the Pretrial Confinement Hearing Record, enclosure (4).

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h. If the decision of the IRO is to release the detainee, the Commanding Officer of the Base Brig will be directed, in writing to effect the release. Subsequent reconfinement shall not be directed except as authorized by reference (b).

i. The IRO is responsible for the conduct of hearings/rehearings on pretrial confinement at any time prior to referral of charges. After referral of charges, the Military Judge may review the propriety of pretrial confinement in court upon motion for appropriate relief by the accused. However, the IRO, if circumstances otherwise warrant, may also conduct hearings/rehearings after referral of charges. Any action by the Military Judge relative to pretrial confinement should be immediately reported to the Initial Review Officer.

7. Concurrence. This Order has been coordinated with and concurred in by the Commanding Generals, II Marine Expeditionary Force; 2d Marine Division; 2d Marine Aircraft Wing, Cherry Point, COMCABEAST, Cherry Point, 2d FSSG; and the Commanding Officer, Marine Corps Air Station, New River; and is applicable to hearings conducted by the IRO at Marine Corps Air Station, Cherry Point, appointed by the Commanding General, Marine Corps Base, Camp Lejeune.


B. A. GOMBAR
Chief of Staff

DISTRIBUTION: A plus CG, MCAS, CP, NC (4)
COMCABEAST, CG, 2d MAW, CP, NC (2)

NOTICE TO ACCUSED UPON PRETRIAL CONFINEMENT

1. The nature of the offense(s) for which you are being held in pretrial confinement (is) (are) _____

2. You have the right to remain silent. Any statement you make may be used against you in a trial by court-martial.

3. You have the right to retain civilian counsel at your own expense and you have the right to request assignment of military counsel to represent you.

4. The procedures by which your pretrial confinement status will be reviewed are as follows:

a. Within 72 hours after ordering you into pretrial confinement, or after receipt of notification that you have been confined, your Commanding Officer shall decide whether pretrial confinement will continue. If he/she approves continued pretrial confinement in your case, a written memorandum containing his/her reasons for this conclusion must be immediately forwarded to the Initial Review Officer, a neutral and detached officer.

b. Within seven days of your being placed in pretrial confinement, the Initial Review Officer will determine the adequacy of probable cause to believe you committed an offense triable by court-martial and the necessity for continued pretrial confinement. At this review hearing, you may be present and represented by civilian counsel at your own expense, or if you so request, you may have military counsel assigned for the limited purpose of representing you at this pretrial confinement review hearing or, if you have a detailed military counsel, he may represent you. The Initial Review Officer may, for good cause, extend the time for completion of the initial review to ten days after imposition of pretrial confinement. Upon completion of the review, the Initial Review Officer will either approve continued pretrial confinement or order your release.

c. The Initial Review Officer, upon request, based upon any significant information, not previously considered and after giving notice to you and the government's counsel, will reconsider the decision to confine you.

ENCLOSURE (1)

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d. Once charges are referred to trial by court-martial, the military judge, upon motion by you, will review your pretrial confinement.

e. If you prefer, you may waive your right to be present at your Pretrial Confinement Hearing. If you invoke this right, your case will still be considered and a determination made by the Initial Review Officer (IRO) as to your release from or continuation of confinement.

ACKNOWLEDGMENT BY THE ACCUSED

1. I have read this document and I understand my rights and the process by which my pretrial confinement will be reviewed.

2. I do/do not desire to be represented by military/civilian counsel.

3. I do/do not desire to be present at my pretrial confinement hearing. Note: Military/civilian counsel signature required if accused waives right to be present at hearing.

ACCUSED SIGNATURE

DATE

Mil/Civ Counsel Signature Date

4. I certify that the accused was given this document and acknowledged his understanding of its contents by his signature above.

DATE

WITNESS SIGNATURE & GRADE

PLACE IN INITIAL REVIEW OFFICER'S
FOLDER PRIOR TO HEARING
MCBCL 1640/40

ENCLOSURE (1)

7 DEC 1999

THIS FORM IS SUBJECT TO THE PRIVACY ACT (NAVMC 11000)

PRETRIAL CONFINEMENT DATA SHEET

Date: _____

From: Commanding Officer, _____
To: Initial Review Officer, Marine Corps Base, Camp Lejeune

Subj: PRETRIAL CONFINEMENT

Ref: (a) BO 1640.10
(b) MCM 1998, RCM 305

1. In accordance with references (a) and (b), the following information is furnished in support of my decision to continue pretrial confinement of:

NAME: _____ SSN: _____ GRADE: _____

UNIT: _____ AGE: _____

AVERAGE PRO: _____ CON: _____ EDUCATION: _____ GT: _____

TIME AND DATE CONFINED: _____ ON _____

TOTAL SERVICE TO DATE: _____
YEARS MONTHS DAYS

MARITAL STATUS: _____ WIFE/CHILDREN IN LOCAL AREA: _____

NUMBER OF CHILDREN: _____ OFF-DUTY EMPLOYMENT: _____

NOTE: ADD MORE INFORMATION AS NECESSARY:

2. The named detainee is alleged to have committed the following offense(s): (Date(s), place(s), UCMJ Articles, etc.)

ENCLOSURE (2)

7 DEC 1999

3. Basis upon which named detainee is suspected of having committed the above alleged offense(s): (Documents, statements, other evidence, etc.)

4. A review of the named detainee's past record reflects the following disciplinary actions (include punishment, if any):

5. In making my decision, I also considered the following matters in extenuation and mitigation:

6. It is my opinion that a lesser form of pretrial restraint is inadequate and continued pretrial confinement is necessary:

a. / / To ensure the presence of the detainee at trial because:

/ / Absence terminated by apprehension.

/ / Past record of absence offenses.

/ / Present absence(s) commenced while detainee was pending former administrative/legal action.

/ / Detainee broke restriction or lesser form of pretrial restraint.

/ / Detainee is accused of crime for which lengthy confinement may be awarded.

/ / Other:

AND/OR

b. / / To prevent the detainee from committing serious criminal misconduct because.

/ / Detainee has past record of committing violent acts.

ENCLOSURE (2)

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- / / Past record/medical/psychiatric evaluation indicates unstable character or mental condition.
- / / Detainee has allegedly tried to obstruct justice by threatening witnesses or tampering with evidence.
- / / It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness or safety of the command.
- / / Other:

8. Additional comments:

Commanding Officer

SAMPLE

7 DEC 1999

THIS MEMORANDUM IS SUBJECT TO THE PRIVACY ACT (NAVMC 11000)

72-HOUR MEMORANDUM FOR CONTINUED PRETRIAL CONFINEMENT

From: Initial Review Officer

To:

Subj: 72-HOUR MEMORANDUM FOR CONTINUED PRETRIAL CONFINEMENT, CASE
OF _____Ref: (a) Manual for Courts-Martial, 1998, Part II
(b) BO 1640.10_

1. Rule 305, subsection (h)(2)(A), page II-22 of reference (a), strictly requires, Not later than 72 hours after ordering a prisoner into pretrial confinement, or after receipt of a report that a member of the commander's unit or organization has been confined, the commander shall decide whether pretrial confinement will continue.

2. Rule 305, subsection (h)(2)(C), page II-23 of reference (a), requires, If continued pretrial confinement is approved, the commander shall prepare a written memorandum which states the reasons for the conclusion that the requirements for confinement in subsection (h)(2)(B) of this rule have been met... This memorandum shall be forwarded to the Reviewing Officer... If such a memorandum was prepared by the commander before ordering confinement, a second memorandum need not be prepared...

3. The commander then ensures the memorandum, in accordance with paragraph 6c of reference (b), is delivered to the prisoner Administrative Office at Building 4000. Failure to receive this 72-hour review response creates an atmosphere of noncompliance with the references and further delays the pretrial confinement requirements of the Reviewing Officer. These requirements include review of the necessity for continued pretrial confinement within seven (7) days of imposition of confinement. The period, for completion of the initial review, may be extended by the Reviewing Officer, for good cause, to ten (10) days.

ENCLOSURE (3)

7 DEC 1999

4. In the case of _____ (name, SSN, unit) confined on _____ (date) at _____ (time), records indicate the written 72-hour response has not been received as required by reference (b). This delay is not considered "good cause" and jeopardizes the proper and expeditious process in this case.

5. You are encouraged to ensure the required written response is received by the Initial Review Officer within the next 24 hours.

6. Questions regarding this matter should be directed to the Initial Review Officer extension 1951 or 5807, or to the Prisoners Services Officer, Base Brig, extension 1308 or 1479.

SIGNATURE

Copy to:
Prisoner SvcO, Base Brig
Command SJA

SAMPLE

ENCLOSURE (3)

7 DEC 1993

THIS FORM IS SUBJECT TO THE PRIVACY ACT (NAVMC 11000)

PRETRIAL CONFINEMENT HEARING RECORD

DATE: _____

From: Initial Review Officer

To: File

Subj: HEARING RECORD IN THE CASE OF _____,
 _____ (Grade and Name) (SSN)
 _____, at _____ hours on _____, 19____
 (Unit/Organization)

1. Hearing:

a. I do/do not desire to be present at my pretrial confinement hearing. Note: Military/civilian counsel signature required if accused waives right to be present at hearing.

 ACCUSED SIGNATURE (DATE) MIL/CIV COUNSEL SIGNATURE (DATE)

2. Procedure:

- a. / / Prior to the commencement of the hearing, subject detainee was advised pertinent to Article 31, UCMJ.
- b. / / Prior to the commencement of the hearing, subject detainee was advised of his right to present evidence.
- c. / / The detainee DID/DID NOT desire to be represented by military/civilian counsel.
- d. / / The detainee DID/DID NOT have counsel present.
 Name of counsel:
- e. / / The following evidence was considered:
- (1) / / Information on the Pretrial Confinement Data Sheet.
- (2) / / Detainee's SRB.

ENCLOSURE (4)

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(3) / / Statement of the detainee (Substance):

(4) / / Other:

3. Decision:

- a. / / Apparent court-martial jurisdiction DOES/DOES NOT exist.
- b. / / Probable cause to believe that offense(s) HAVE/HAS BEEN committed and that subject detainee committed same.
- c. / / Continued pretrial confinement is not appropriate and his release is directed forthwith.

OR

- d. / / A lesser form of pretrial restraint is considered inadequate and continued pretrial confinement is appropriate:

(1) / / To ensure the presence of the detainee at trial because:

/ / Absence was terminated by apprehension.

/ / Past record of absence offenses.

/ / Present absences commenced while detainee was pending former administrative/legal action.

/ / Detainee broke restriction of lesser form of pretrial restraint.

/ / Detainee is accused of crime for which lengthy confinement may be awarded.

/ / Other:

AND/OR

(2) / / To prevent the detainee from committing serious criminal misconduct because:

ENCLOSURE (4)

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- / / Detainee has past record of committing violent acts.
- / / Past record/medical/psychiatric evaluation indicates unstable character or mental condition.
- / / Detainee has allegedly tried to obstruct justice by threatening witnesses or tampering with evidence.
- / / It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness or safety of the command.
- / / It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the national security of the United States.
- / / Other:

Initial Review Officer

(3) Rehearing

- / / Initial Review Officer determined to reconsider on own motion.
- / / Requested by detainee or counsel because of new evidence.
- / / Requested by command because of new evidence.
 - (a) Rehearing granted/denied because of no new evidence/charges referred to trial (review by military judge).
 - (b) Information considered:

ENCLOSURE (4)

7 DEC 1999

(c) Detainee's counsel, if any, notified of all information considered and given opportunity to rebut.

(d) Decision:

Initial Review Officer

Date

Copy to:

Commanding Officer, _____
Commanding Officer, Base Brig

Detainee

File (Original)

SAMPLE

ENCLOSURE (4)